

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

INTELLDENT CORPORATION

Plaintiff,

v.

INTERNATIONAL PLASTICS LLC, *et al.*

Defendants

CASE NO. 13 C 638

JUDGE RONALD A. GUZMAN

MAGISTRATE JUDGE MARIA  
VALDEZ

**PLAINTIFF INTELLDENT CORPORATION'S  
POST-HEARING BRIEF**

**I. INTRODUCTION**

Plaintiff, Intelldent Corporation (“Intelldent”), submitted sufficient, undisputed evidence at the temporary restraining order/preliminary injunction hearing held on February 15, 2013, such that this Court may issue a temporary restraining order and/or preliminary injunction pending trial. Alternatively, it is requested that this Court issue a temporary restraining order to last until the conclusion of any continued preliminary injunction hearing scheduled by the Court.

In order to be entitled to a temporary restraining order or preliminary injunction, Plaintiff must demonstrate it is entitled to same by proof of the following four elements based upon clear and convincing evidence:<sup>1</sup>

1. Plaintiff is likely to succeed on the merits of its claims;
2. Plaintiff is likely to suffer irreparable harm without an injunction.
3. The harm that Plaintiff will suffer without an injunction is greater than the harm that preliminary relief would inflict upon Defendants.
4. The injunction is in the public interest.

---

<sup>1</sup> For purposes of staying within page limits established by the Court, the Plaintiff incorporates herein case citations set out in prior briefs filed in support of its motions for temporary restraining order and for preliminary injunction.

The discussion below will flesh out each of these elements, and also will address Defendants' claims that Plaintiff should be denied a preliminary injunction because it engaged in laches and/or it has unclean hands.

**II. BASED UPON UNREFUTED EVIDENCE, PLAINTIFF IS ENTITLED TO A PRELIMINARY INJUNCTION**

**A. Plaintiff is likely to succeed on the merits of its claims.**

It is uncontested that Defendants were directors and officers (vice presidents) of Plaintiff. (Exhibit 18<sup>2</sup>; T. 50-51) “It is well established that corporate officers and directors have a fiduciary relationship with their corporation. Among those duties, which officers and directors owe their corporation, are undivided loyalty, good faith, honesty, and full disclosure.” *Leavitt v. Leisure Sports Incorporation*, 103 Nev. 81, 92, 734 P.2d 1221, 1228 (Nev. 1987). Directors and officers breach their fiduciary duty if they “exploit an opportunity that belongs to the corporation.” *Bedore v. Familiar*, 122 Nev. 5, 12, 125 P.3d 1168, 1173 (2006), quoting *Leavitt*, 103 Nev. at 87, 734 P.2d at 1225. “An opportunity belongs to the corporation if it is one in which the corporation has an expectancy interest or property right.” *Id.*

A former officer or director remains bound by his fiduciary duty not to undertake any transaction founded on information he acquired during his employment. See *Dowell v. Bitner*, 273 Ill. App. 3d 681, 691 (4<sup>th</sup> Dist. 1995); *Comedy Cottage v. Berk*, 145 Ill. App. 3d 355, 360-61 (1<sup>st</sup> Dist. 1986). In *Elcor, Inc. v. Murray*, 1997 WL 136278 (March 20, 1997 N.D. Ill.), the court stated at \*9 that, “even assuming *arguendo* that the [defendant] did not begin competing with [the corporation] until after his resignation, he would remain bound by his fiduciary duty not to

---

<sup>2</sup> The parties have stipulated to the admission into evidence of all exhibits contained in the exhibit book provided to the Court and the witnesses at the hearing. To the extent Defendants submit additional exhibits in their post-hearing pleadings, Plaintiff does not stipulate to the admission into evidence of any such exhibits.